

INDIAN LODGE CONSORTIUM
AND
CHILOQUIN INDIAN LODGE
v.
DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 82-43-A, 82-44-A

Decided December 10, 1982

Consolidated appeals from decisions by Deputy Assistant Secretary--Indian Affairs (Operations) approving rejections of late-filed applications for grant funding.

Affirmed.

1. Indian Child Welfare Act of 1978: Financial Grant Applications:
Funding

Failure to timely file application for grant funding under the Indian Child Welfare Act of 1978 permits rejection of late offers pursuant to Departmental notice and regulation.

APPEARANCES: Ray Eagle Pipe for appellant, Indian Lodge Consortium; Mel Chiloquin for appellant, Chiloquin Indian Lodge; Penny Coleman, Esq., for appellee, Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On February 23, 1982, appellants, Indian Lodge Consortium and Chiloquin Indian Lodge, delivered applications for grant funding to the Portland Office, Bureau of Indian Affairs (BIA). The applications were made to obtain funding pursuant to the provisions of the Indian Child Welfare Act of November 8, 1978 (Act), 92 Stat. 3069, 25 U.S.C. §§ 1931-1934 (Supp. II 1978). Earlier, on January 25, 1982, BIA published a notice in the Federal Register advertising that it would receive grant applications for funding under the Act from qualified organizations until February 22, 1982. The notice advised prospective applicants that: "Applications must be received in the appropriate Bureau of Indian Affairs, Social Services Office, on or before 4:15 P.M. on the closing date of the applications period." 47 FR 3413, 3414 (Jan. 25, 1982).

Appellants attempted to deliver their applications at 4:20 p.m. on February 22, 1982. Informed the BIA Social Services office was closed for the day, they returned to file the applications on February 23. It therefore appears that appellants' applications were 1 day late. As a consequence, their applications were rejected by the Portland Area Director, BIA. On

April 28, 1982, the Deputy Assistant Secretary--Indian Affairs (Operations), John W. Fritz, held the rejection of the late-filed applications was proper on the grounds the rejection was a lawful exercise of Departmental responsibility which was required for considerations of administrative necessity.

On appeal to this Board, appellants contend the circumstances which prevented a timely filing of their applications should move the compassion of the Department to consider the applications together with those which were timely filed. Counsel for appellee submits that no legal basis exists for such action. ^{1/}

The Department has promulgated regulations to implement the Act, which are published at 25 CFR Part 23, Subpart C. These rules respecting administrative handling of grant funding applications provide a series of time limitations within which action is required by BIA in order to permit the agency to execute the funding provisions of the Act on the behalf of the Secretary. The delivery of the funding required by the Act clearly requires a timetable to be established by the agency of a nature similar to that provided by the regulations. Under the circumstances, BIA was reasonably required to establish a closing time for receipt of applications in order to permit agency action to be completed in an orderly and timely fashion. Thus, as appellee contends, the Federal Register notice must be accorded the force of law. For this reason, undisputed by appellants, the decision of April 28, 1982, must be affirmed as a proper exercise of the Secretary's authority.

Accordingly, pursuant to the authority delegated to the Board of Indian Appeals, 43 CFR 4.1, the pending appeals are denied.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Jerry Muskrat
Administrative Judge

^{1/} Although not raised by appellee's brief, it appears the appeal may also be moot, since the applications were for projects planned for fiscal year 1983, which has already begun. See Aleutian/Pribilof Islands Ass'n, Inc. v. Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 23 (1982).